

FILED**DEC - 7 2011**Clerk, U.S. District & Bankruptcy
Courts for the District of Columbia**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA****SAFETY RESEARCH & STRATEGIES, INC.**)

340 Anawan Street)

Rehoboth, MA 02769)

Plaintiff,)

v.)

U.S. DEPARTMENT OF TRANSPORTATION)

400 Seventh Street, S.W.)

Washington, DC 20590)

Defendant.)

Case: 1:11-cv-02165

Assigned To : Roberts, Richard W

Assign. Date : 12/7/2011

Description: FOIA/Privacy Act

COMPLAINT FOR INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, for injunctive and other appropriate relief and seeking the disclosure and release of agency records improperly withheld from plaintiff by defendant U.S. Department of Transportation and its component, the National Highway Traffic Safety Administration.

Jurisdiction and Venue

2. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). This court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

Parties

3. Plaintiff Safety Research & Strategies, Inc. ("SRS") is a Massachusetts company specializing in motor vehicle and product safety research, investigation and advocacy. SRS's clients include attorneys, engineering firms, supplier companies, media, and government. SRS works with organizations and entities interested in improving vehicle and product safety. The company's advocacy mission includes the publication of special reports, articles and

investigations and submissions to safety agencies and policymakers on matters of public interest.

Much of SRS's advocacy work is performed on a *pro bono* basis.

4. Defendant U.S. Department of Transportation ("DOT") is a Department of the Executive Branch of the United States Government and includes as a component the National Highway Traffic Safety Administration ("NHTSA"). DOT is an agency within the meaning of 5 U.S.C. § 552(f).

"Unintended Accelerations" in Toyota Vehicles

5. In 2009, SRS began investigating "unintended accelerations" in Toyota vehicles, a defect that had resulted in numerous injuries and deaths. Subsequently, the company published and/or commissioned six detailed reports and analyses related to the defects and NHTSA and Toyota's investigations, based on public records. These reports are available on SRS's website at www.safetyresearch.net. SRS's founder and president, Sean Kane, testified before the U.S. House of Representatives Committee on Energy and Commerce concerning the Toyota "unintended acceleration" in February 2010. Mr. Kane was also invited to make a related presentation to the Transportation Research Board of the National Academies for its study of electronic vehicle controls and unintended acceleration in June 2011.

6. The Toyota "unintended acceleration" problem has generated thousands of complaints to NHTSA and has been the subject of at least eight NHTSA investigations and a series of recalls. The issue has also been the focus of considerable news media attention.

7. A highly publicized fatal crash in August 2009 and Congressional inquiries led to a NHTSA technical evaluation of possible electronic causes of high-speed "unintended accelerations," which NHTSA conducted with Toyota and the National Aeronautics and Space Administration's Engineering Safety Center. This effort concluded on February 8, 2011.

8. On December 2, 2010, the owner of a 2007 Lexus RX experienced an “unintended acceleration” incident in Sarasota, Florida. The Lexus RX was not included in any of the “unintended acceleration” recalls at the time. On January 5, 2011, the vehicle owner reported the incident to NHTSA. On January 6, 2011, the complaint was added to NHTSA’s publicly available consumer complaint database and was designated as “ODI complaint #10375778.” This incident subsequently led to another recall.

Plaintiff’s FOIA Request and NHTSA’s Denial of Access

9. By letter to NHTSA dated June 23, 2011, plaintiff submitted a FOIA request seeking the following agency records:

- Inspection records and/or documentation of the 2007 Lexus referenced in ODI complaint #10375778 conducted by the agency and/or a contractor for the agency;
- Static and/or dynamic testing (and all related documents) conducted on any vehicle by the agency and/or a contractor for the agency as a result of ODI complaint #10375778;
- Communications with any Toyota entity as a result of agency test results and/or ODI complaint #10375778;
- Communications with the Toyota dealer referenced in ODI complaint #10375778; and
- Photographs and/or video files created as a result of the agency’s investigation of ODI complaint #10375778.

10. By letter to plaintiff dated August 22, 2011, NHTSA responded to plaintiff’s FOIA request. NHTSA stated that it had “located 45 pages of records and photographs and videos responsive to” plaintiff’s request. NHTSA released 10 pages of material with certain redactions pursuant to FOIA Exemption 6. NHTSA further stated that it “located a 9 page field report submitted to NHTSA pursuant to the Early Warning Reporting regulation,” and that the report was being withheld “because it contains information related to trade secrets or confidential financial or commercial information pursuant to Exemption 4” and “because it is related to pre-

decisional agency deliberations, opinions, or recommendations pursuant to Exemption 5.”

Finally, NHTSA stated that it is “withholding an additional 26 pages of information, as well as the photographs and videos” on the ground that “they are exempted from the statutory disclosure requirement that [sic] contain information related to pre-decisional agency deliberation, opinions or recommendations pursuant to Exemption 5.” NHTSA advised plaintiff of its right to appeal the agency’s decision to withhold the requested records.

11. By letter to NHTSA’s Chief Counsel dated September 22, 2011, plaintiff appealed the agency’s denial of its FOIA request. To date, the agency has not responded to plaintiff’s administrative appeal.

12. Plaintiff has exhausted the applicable administrative remedies.

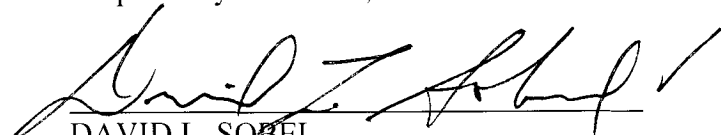
13. Defendant DOT and its component, NHTSA, have wrongfully withheld the requested records from plaintiff.

Requested Relief

WHEREFORE, plaintiff prays that this Court:

- A. order defendant DOT and its component, NHTSA, to disclose the requested records in their entirety and make copies available to plaintiff;
- B. provide for expeditious proceedings in this action;
- C. award plaintiff its costs and reasonable attorneys fees incurred in this action; and
- D. grant such other relief as the Court may deem just and proper.

Respectfully submitted,


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